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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 JOHNNY B. DELASHAW, JR.,

11 Plaintiff,

12 v.

13 SEATTLE TIMES COMPANY, et  
14 al.,

15 Defendants.

CASE NO. C18-0537JLR

ORDER ON SEATTLE TIMES'  
MOTION FOR CLARIFICATION

16 Before the court is Defendant Seattle Times Company's ("Seattle Times" or "the  
17 Times") motion for clarification (Mot. (Dkt. # 287)) of the court's order granting the  
18 Seattle Times' second motion for summary judgment and granting in part and denying in  
19 part Defendant Dr. Charles Cobbs's second motion for summary judgment (2d MSJ  
20 Order (Dkt. # 285) (sealed)). Namely, the Times requests that the court clarify the  
21 burden of proof for the various elements of a defamation claim. (Mot. at 1.) In its order,  
22 the court noted that a plaintiff must establish each element of a defamation claim "by

1 convincing clarity.” (2d MSJ Order at 11 (citing *Mark v. Seattle Times*, 635 P.2d 1081,  
2 1089 (1981)). The Times requests the court clarify that under Washington law “a  
3 plaintiff in an action for defamation must prove actual malice by convincing clarity, and  
4 the other elements by a preponderance of the evidence.” (Mot. at 1-3 (citing *Richmond v.*  
5 *Thompson*, 922 P.2d 1343 (Wash. 1996); *Duc Tan v. Le*, 300 P.3d 356 (Wash. 2013).)

6 The Times’ proposed clarification, however, elides a distinction in the case law—  
7 whether the plaintiff in the defamation case is a private or public figure. In both  
8 *Richmond* and *Duc Tan*, the Court analyzed defamation claims brought by public figures.  
9 (See *Richmond*, 922 P.2d at 1348 (“Both parties agree Trooper Richmond is a public  
10 official under *New York Times*.); *Duc Tan*, 300 P.3d at 358, 366 (finding that “[t]he trial  
11 judge determined that [plaintiffs] were public figures” and “[a] public figure defamation  
12 plaintiff must prove with clear and convincing evidence that the defendant made the  
13 statements with ‘actual malice.’”) In *Mohr v. Grant*, however, the Washington Supreme  
14 Court recognized that “[c]ase law is unclear as to whether a private plaintiff facing a  
15 defense motion for summary judgment must make a *prima facie* showing of all of the  
16 elements of defamation with convincing clarity or by a preponderance of the evidence.”  
17 *Mohr v. Grant*, 108 P.3d 768, 773 n.7 (Wash. 2005) (comparing *Richmond* and *Mark* but  
18 declining to resolve the ambiguity).

19 The court finds that a clarification is appropriate on this point. But in light of the  
20 explicit statement of ambiguity on the burden of proof from the Court in *Mohr* and the  
21 apparent absence of clarification since, the court does not find it proper to adopt the  
22 blanket statement proposed by the Times. To ensure no further confusion, the court will

1 issue an amended order pursuant to Federal Rule of Civil Procedure 60(a). Rule 60(a)  
 2 permits the court to “correct a clerical mistake . . . arising from oversight . . . whenever  
 3 one is found in a[n] . . . order.” Fed. R. Civ. P. 60(a). Further, “[t]he court may do so . . .  
 4 on its own, with or without notice.” *Id.* As relevant here, Rule 60(a) “allows a court to  
 5 clarify a judgment in order to . . . reflect the necessary implications of the original order,  
 6 [or] to ensure that the court’s purpose is fully implemented.” *Tattersalls, Ltd. v.*  
 7 *DeHaven*, 745 F.3d 1294, 1298 (9th Cir. 2014) (citing *Garamendi v. Henin*, 683 F.3d  
 8 1069, 1079 (9th Cir. 2012)). Clarifications pursuant to Rule 60(a) are appropriate so long  
 9 as the clarifications do not change an order’s “operative, substantive terms,” and are  
 10 instead done to maintain “fidelity to the intent behind the original judgment.” *See*  
 11 *Garamendi*, 683 F.3d at 1078-80.

12 To correct its clerical mistake, the court will amend the sentence beginning at page  
 13 11, line 2 and ending at page 11, line 13 of the court’s November 18, 2020 summary  
 14 judgment order from:

15 A plaintiff must establish each element “by evidence of convincing clarity.”  
 16 *Mark*, 635 P.2d at 1089.

17 to:

18 In a defamation action brought by a public figure, a plaintiff “must prove  
 19 with clear and convincing evidence that the defendant made the statements  
 with ‘actual malice’” and prove the remaining elements by a preponderance  
 of the evidence. *See Duc Tan*, 300 P.3d at 366, 366 n.5.

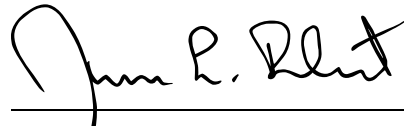
20 The court will also insert a footnote following the above sentence which reads:

21 The Washington Supreme Court has recognized that “[c]ase law is unclear  
 22 as to whether a private plaintiff facing a defense motion for summary  
 judgment must make a *prima facie* showing of all of the elements of

1       defamation with convincing clarity or by a preponderance of the evidence.”  
2       *Mohr v. Grant*, 108 P.3d 768, 773 n.7 (Wash. 2005). The court finds that it  
3       need not attempt to resolve this ambiguity in this order. To the extent Dr.  
4       Delashaw has failed to make a *prima facie* showing of any elements of his  
5       defamation claims, he has failed to do so under what is required by a  
6       preponderance of the evidence standard at this stage in the proceedings. To  
7       the extent he has made a *prima facie* showing, he has done so under what is  
8       required by a convincing clarity standard.

9       The court ordered counsel to submit additional filings and proposed redactions in its  
10      original order. (*See* 2d MSJ at 34-35.) The court will also insert footnotes in its amended  
11      order clarifying that the parties have complied with these directions from the court.  
12      These amendments maintain fidelity to the intent behind the court’s original order. *See*  
13      *Garamendi*, 683 F.3d at 1078-80. No other amendments to the order are necessary.

14               Dated this 11th day of December, 2020.

A handwritten signature in black ink, appearing to read "James L. Robart", written over a horizontal line.

JAMES L. ROBART  
United States District Judge